

Prepared by:

DECLARATION OF CONSERVATION RESTRICTION/EASEMENT

This DECLARATION OF CONSERVATION RESTRICTIONS/EASEMENT made this
day of .

WITNESSETH:

WHEREAS, (insert the owner's name) hereinafter called the Declarant, is the owner in fee simple of certain real property including its air space and subsurface, and all rights therein, hereinafter called the "Protected Property," which has ecological, scientific, educational and aesthetic value in its present state as a natural area which has not been subject to development or exploitation, which property known as Block ____, Lot ____ in (Municipality), (County), County Clerk or Recorder's Deed Book Number ____, Page Number ____, New Jersey is more particularly described in Exhibit A (metes and bounds description) attached hereto and incorporated by this reference; and

WHEREAS, the State of New Jersey, Department of Environmental Protection (hereinafter called the "Department") is authorized by N.J.S.A. 13:ID-9 to formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State and is authorized by N.J.S.A. 13:8B-3 to acquire and enforce conservation restrictions in conjunction with the construction of a wetland mitigation site known as the (insert name of mitigation bank/site); and

WHEREAS the Protected Property is a significant natural area and a valuable component of a freshwater wetlands ecosystem; and

WHEREAS the Declarant desires to preserve the Protected Property in its natural state so as to preserve and protect the freshwater wetlands, open waters, and resident animal and plant species on the Protected Property,

NOW, THEREFORE, the Declarant, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions, and restrictions herein contained and as an absolute and unconditional gift, does hereby covenant, and agree with the Department, that the Protected Property, including its air space and subsurface and, all rights therein, is hereby subject to the following covenants, restrictions and easements in perpetuity:

1. Purpose. It is the purpose of this Conservation Restriction/Easement to assure that the Protected Property, including its air space and subsurface, will be retained forever in its natural, scenic and open condition as a valuable component of a freshwater wetlands ecosystem; to protect any rare plants, animals, or plant communities on the Protected Property, its air space and subsurface, and to prevent any use of the Protected Property that will impair or interfere with the conservation values or interests of the Protected Property, including its air space and subsurface. Declarant intends that its Conservation Restriction/Easement will confine the Protected Property, including its air space and its subsurface, to such activities as are consistent with the purpose of this Conservation Restriction/Easement and as permitted in the plans and specifications approved by the Department.

2. Prohibited Uses. Except as authorized in the plans and specifications for construction of the mitigation activity, use of the Protected Property, its air space and its subsurface, inconsistent with the purpose of this Conservation Restriction/Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited on the Protected Property, including its air space and subsurface:

2.1 There shall be no constructing or placing of any building, tennis court, landing strip, mobile home, swimming pool, fence or sign (other than those required for appropriate management), asphalt or concrete

pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line or any other temporary or permanent structure or facility on, above or below the premises, other than those structures which currently exist (which may be maintained, repaired, or replaced, but not substantially expanded, on the same site, in whole or in part by like structures used for the same or similar purposes.)

- 2.2 There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of loam, peat, gravel, soil, topsoil, sand, rock, minerals or other materials on or below the Protected Property, nor any change in the topography of the Protected Property in any manner.
- 2.3 There shall be no removal, destruction or cutting of trees or plants, planting of trees or plants, use of fertilizers, introduction of non-native animals and plants, grazing of domestic animals, or disturbance or change in the natural habitat in any manner, except as provided in par. 3.4 below.
- 2.4 There shall be no storage or dumping of soil, ashes, trash, garbage, or other material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, above or below the Protected Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on, above or below the Protected Property or on, above or below adjacent property if owned by Declarant which could cause erosion or siltation on the Protected Property.
- 2.5 There shall be no pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or

any other water bodies, nor shall there be activities conducted on, above or below the Protected Property or on, above or below adjacent property if owned by Declarant, which would be detrimental to water purity, drainage, flood control, water conservation, erosion control or soil conservation, or which could alter the natural water level and/or flow in or over the Protected Property.

2.6 The Protected Property, including its air space and its subsurface, and any portion thereof shall not be included as part of the gross area of other property not subject to this Conservation Restriction/Easement for the purposes of determining density, lot coverage, or open space requirements, under otherwise applicable laws, regulations or ordinances controlling land use and building density.

2.7 There shall be no other acts or uses detrimental to the preservation of the Protected Property, including its air space and its subsurface in their natural state as a valuable component of a freshwater wetlands ecosystem.

3. Department's Rights. To accomplish the purpose of this Conservation Restriction/Easement, the following rights are conveyed to the Department by this Conservation Restriction/Easement:

3.1 The right to preserve and protect the conservation values of the Protected Property, including its air space and subsurface.

3.2 The right of visual access to and view of the Protected Property in its natural, scenic and open condition.

3.3 Inspection and Scientific Studies. The right to enter the Protected Property at all reasonable times and, if necessary, across other lands retained by the Declarant, for the purposes of (a) inspecting the Protected Property to determine if the Declarant is complying with the covenants

and purposes of this Conservation Restriction/Easement; (b) enforcing the terms of this Conservation Restriction/Easement; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order-of court, to remedy or abate violations hereof; and (d) observing and studying nature and making scientific and educational observations and studies and taking samples.

- 3.4 Monitoring and Management. The right, but not the obligation, to monitor the condition of the rare plant and animal populations, plant communities, and natural habitats on the Protected Property, and to manage them, if necessary, for their continued survival and quality on the Protected Property. Such activities shall be in accordance with management practices of the Department, which may include, but not be limited to, mowing, fencing, trapping, prescribed burning, but not inconsistent with the maintenance or monitoring obligations under the (reference the mitigation proposal or permit condition) approving the mitigation.
- 3.5 Enforcement. The right to prevent any activity on or use of the Protected Property, including its air space and subsurface, that is inconsistent with the purpose of this Conservation Restriction/Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use. Enforcement of this Conservation Restriction/Easement shall be at the discretion of the State of New Jersey and any forbearance on behalf of the -State of New Jersey to exercise its rights hereunder in the event of any breach hereof by Declarant, its successors or assigns shall not be deemed or construed to be a waiver of the State's rights granted hereunder in the event of any subsequent breach. This shall be true regardless of the number of

breaches which occur or the length of time of any forbearance from enforcement.

3.6 Discretionary Consent. The Department's consent for activities otherwise prohibited under paragraph 2 above, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in paragraph 2 are deemed desirable by the Department, the Department may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring the Department's consent under paragraph 2 shall be in writing. The Department may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of this Conservation Restriction/Easement and (2) either enhance or do not impair any conservation interests associated with the Protected Property.

4. Air and Subsurface Rights. This Conservation Restriction/Easement expressly applies to all development and exploitation of the Protected Property, its air space and subsurface, and all development or other rights therein.

5. Access. Nothing contained in this Conservation Restriction/Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof.

6. Costs and Liabilities. Declarant retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of adequate comprehensive general liability insurance coverage. Declarant shall keep the Protected Property free of any liens arising out of any work performed from materials furnished to or obligations incurred by Declarant.

7. Taxes. The Declarant agrees to pay any real estate taxes or other assessments levied on the Protected Property. If the Declarant becomes delinquent in payment of said taxes or assessments, such that a lien against the land is created, the Department, at its option, shall, after written notice to the Declarant, have the right to purchase and acquire the Declarant's interest in said Protected Property by paying funds to discharge said lien or delinquent taxes or assessments, or to take such other actions as may be necessary to protect the Department's interest in the Protected Property and to assure the continued enforceability of this Conservation Restrictive/Easement.

8. Parties Subject to Easement. The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this grant shall not only be binding upon the Declarant, but also upon its lessees, agents, personal representatives, successors and assigns, and all other successors to Declarant in interest and shall continue as a servitude running in perpetuity with the Protected Property.

9. Subsequent Transfers. The Declarant agrees that the terms, conditions, restrictions and purposes of this Conservation Restriction/Easement will be inserted by Declarant in any subsequent deed or other legal instrument by which the Declarant divests either the fee simple title or possessory interest in the Protected Property, and Declarant further agrees to notify the Department of any pending transferal least thirty (30) days in advance.

10. Merger. The Declarant agrees that the terms of this Conservation Restriction/Easement shall survive any merger of the fee and easement interest in the Protected Property.

11. Assignment. The Department agrees that it will assign its rights under this instrument only to another governmental body or a charitable conservancy, and only in accordance with X.J..S.A. 13:8B-1 et seq.

12. Miscellaneous Provisions.

12.1 Severability. If any provision of this Conservation Restriction/Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of the Conservation Restriction/Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

12.2 Successors and Assigns. The term Declarant shall include the Declarant and the Declarant's heirs, executors, administrators, successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use. The term Department shall include the Department, its successors and assigns.

12.3 Re-recording. The Department is authorized to record or file -any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction/Easement; the Declarant agrees to execute any such instruments upon request.

12.4 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this, Conservation Restriction/Easement and shall have no effect upon construction or interpretation.

TO HAVE AND TO HOLD the said Conservation Restriction/Easement unto the said Department forever.

IN WITNESS WHEREOF, the Declarant has executed and sealed this document the day and year first above written.

ATTEST:

(name of company)

Corporate Secretary

By:_____

(name)

Title:_____

NJ Department of Environmental Protection
Land Use Regulation Program
Standard Conservation Restriction for Mitigation Sites

STATE OF (fill in name)
COUNTY OF (fill in name)

On this _____ day of _____ before me personally appeared _____, to me personally known, who, being by me duly sworn did say that he is the (fill in title) of the corporation named in the foregoing instrument, that the seal affixed to said instrument is the corporation seal of said corporation, and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My Commission Expires: